IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9553 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAVED @ ZAFARHUSSAIN @ BHURIYO BABANBHAI SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MR JK PARMAR for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/04/2000

ORAL JUDGEMENT

#. On May 15, 1999, Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Javed @ Zafarhussain @ Bhuriyo Babanbhai

Shaikh, under the provisions of the PASA Act.

#. Ten offences under the various provisions of Indian Penal Code ranging from sections 392 to 399 are registered against the detenue which are considered by the detaining authority. The detaining authority also considered statements of two witnesses in respect of incidents dated April 2, 1999 and March 23, 1999. After considering less drastic remedies, the detaining authority came to a conclusion that the detention under the PASA Act is the only efficacious remedy that can be resorted to. The detaining authority found that the petitioner is a "dangerous person" and that his activities are detrimental to public order.

#. The learned advocate for petitioner has raised number of contentions. The first contention that is raised and pressed into service by Mr. Parmar, learned advocate appearing for the petitioner is that the order of detention is not served on the petitioner-detenue. The second contention is that the representation was made on behalf of the detenue on October 7, 1999 to the detaining authority which has not been replied to. The contention in the petition is that it has not been forwarded to the government (para - 12). As regards the statements of anonymous witnesses, it has been contended that the detaining authority has verified the statements on May 15, 1999 and order is passed on the same day and therefore, this is an improper exercise of powers under section 9(2) of the PASA Act. The last contention is that the petitions of the co-detenues have been accepted by this Court and they have been released from detention. Mr. Parmar, therefore, urged that on the above ground, the petition may be allowed. No other contention is raised and no authority cited.

#. Mr. K.T. Dave, learned AGP has opposed this petition strongly. According to him, the petition deserves to be rejected only on the ground of misrepresentation of facts made in the petition. He has drawn attention of this Court to the fact that the representation alleged to have been made to the detaining authority and not forwarded expeditiously by the detaining authority is a non-existent ground. No representation is ever made to the detaining authority. In fact, the representation is made to the government and the government in turn passed it over to the detaining authority and therefore, the ground regarding delay in forwarding the representation that is tried to be made out in para 12 of the petition is not correct.

4.1 Mr. Dave further submitted that the petitioner was on police remand in one case and in rest of the cases registered against him, he was in judicial custody. Despite this, the petitioner comes with a case in para 13 that he has been enlarged on bail in connection with the offences and inspite of that the detaining authority has relied, considered and based the order of detention on such offences. Mr. Dave, therefore, urged that the petitioner has not come in court with clean hands and an attempt is made to mislead the court. As regards non-service of copy of order of detention to the detenue, Mr. Dave has shown to this Court a copy of order of detention from the file of the government, which bears acknowledgment about its receipt signed by the detenue and therefore also, Mr. Dave contended that the petitioner has not come with correct facts before the court and the petition may be dismissed on this ground.

4.2 As regards statements of anonymous witnesses, factually there is no dispute on the part of Mr. Dave that the statements have been verified by the detaining authority on May 15, 1999 and the order is passed on that very day. He further contended that the subjective satisfaction is recorded by the detaining authority and therefore, the petition may be dismissed.

#. Having regard to the rival side contentions, in the facts of the case, the petition or the petitioner hardly deserve any sympathy. The petitioner has come with incorrect statements in the petition. Incorrect statements are made and the same incorrect statements have been emphatically argued by learned advocate for the petitioner. A plain look on the copy of the order of detention makes it clear that the petitioner has acknowledged the receipt of the order of detention and other papers. It is worth while to note that the petition contends thus:

> "7(A). The petitioner says and submits that the authority has not supplied the copy of order of detention along with the chargesheet and therefore petitioner could not make effective representation in his defence and valuable right U/A 22(5) of the Constitution is vitiated hence order of detention is bad and requires to be quashed. The petitioner further submits that petitioner should get a copy of order of detention after the representation being made by the Advocate on his behalf."

Reply thereto by the detaining authority in his affidavit runs thus;

"8. With regard to para 7(A) of the petition,
I say and submit that the contentions raised in this para are denied hereby. I further say that all the cases referred to and relied upon in the grounds of detention are pending investigation cases and there is no question of supplying the copy of chargesheet and hence the contention raised in this para is baseless and not tenable."

The word "chargesheet" which is used in the petition is claimed to mean the compilation of papers served with the grounds of detention because it is not contended that the papers of the criminal cases and charge sheets therein are not supplied to the petitioner. It is demonstrated by learned AGP that order of detention is served on the detenue and that he has acknowledged the same. Learned advocate Mr. Parmar had no answer to this. The contention raised in the petition is also ambiguous. Reference to charge sheet therein is found to be misleading. Be it as it may, there appears no substance in the contention of the petitioner that the order of detention is not served on the detenue.

#. So far as the representation is concerned, in the petition, it is contended that it is made to the detaining authority with a request to forward the same to the State Government for consideration. But still, no reply is given by the authority and there is delay in forwarding it to the State Government and therefore, the right of the detenue of making an effective representation is affected. Now, if the copy of representation is seen, it is addressed to the Home Secretary. There is nothing to indicate as to when it was dispatched and when it was received. However, the other side does not come with a case that it is not received. What is material is that the petitioner comes with a wrong plea of representation having been sent to the detaining authority and the detaining authority having not forwarded the same to the government in time. The representation made to the government was considered and rejected by the State Government and the State Government directed the detaining authority to supply certain documents. That representation is dated October 7, 1999 which was received by the State Government on 12th October, 1999 and decided on 14th October, 1999 and as such, it cannot be said that there is any delay in considering the representation and there was no question of forwarding the representation by the detaining

authority to the government. It transpires from the affidavit-in-reply that the government directed the detaining authority to supply certain documents and the same have been supplied to the detenue. In this view of the matter, there does not appear to be any substance in the contention regarding non-consideration of the representation of detenue by appropriate authority.

#. So far as the statements are concerned, they are verified by the detaining authority on that very day. In this regard, it may be noted that the detaining authority has stated in the affidavit-in-reply that he was satisfied by more important public interest is served by protecting the address and material from disclosure to the detenue. The authority further stated that he was fully satisfied upon inquiry that the apprehension expressed by the informant is honest and genuine and reasonable in the facts and circumstances of the case. The detaining authority also kept in mind the general background, character, antecedents, criminal tendency and propensity of the detenue at the time of claiming privilege under section 9(2) of the PASA Act and that he was fully satisfied that the alleged apprehension is not imaginary and fanciful. If this exercise is undertaken by the detaining authority, it cannot be said that there is improper exercise of powers under section 9(2) of the PASA Act.

#. As regards the last contention that orders in respect of co-detenue are quashed, it may be noted that no details are given on behalf of the petitioner in respect of name of such detenue, number of such petition, date of disposal of such petition and reasons for quashing of the detention order. It is therefore, not possible to accept this contention. Under the circumstances, the petition fails on all contentions that are raised on behalf of the petitioner/detenue. No other contention is raised. No other case-law is cited. The petition therefore must fail and the same is therefore dismissed. Rule is discharged with no order as to costs.

[A.L. DAVE, J.]

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